Supreme Court, U.S.
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OFFICE OF THE CLERK

No. 91-2054

In the Supreme Court of the United States

OCTOBER TERM, 1992

UNITED STATES DEPARTMENT OF JUSTICE, ET AL.,
PETITIONERS

v.

VINCENT JAMES LANDANO

**On Writ of Certiorari to the
United States Court of Appeals
for the Third Circuit**

JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI FILED JUNE 22, 1992
CERTIORARI GRANTED OCTOBER 5, 1992

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

No. 90-CV-1953

LANDANO

v.

DEPT. OF JUSTICE, ET AL.

RELEVANT DOCKET ENTRIES

DATE		PROCEEDINGS
5/16/90	1	COMPLAINT filed; FILING FEE $120.00 RECEIPT #130383 [Entry date 05/22/90]
	* * * *	
5/16/90	3	NOTICE of Allocation and Assignment filed. Magistrate RONALD J. HEDGES [Entry date 05/22/90]
	* * * *	
6/14/90	5	ANSWER to Complaint by DEPT. OF JUSTICE, FBI [Entry date 06/15/90]
7/30/90	6	CONSENT ORDER, for leave to file First Amended Complaint (signed by Judge H. L. Sarokin) [Entry date 08/01/90]
8/9/90	7	AMENDED ANSWER to Complaint by FBI, DEPT. OF JUSTICE: amends [5-1] answer (ej) [Entry date 08/14/90]

DATE		PROCEEDINGS
8/13/90	8	AMENDED COMPLAINT by VINCENT JAMES LANDANO, (Answer due 8/23/90 for DEPT. OF JUSTICE, for FBI) amending [1-1] complaint [Entry date 08/15/90]
9/10/90	9	Notice of MOTION by VINCENT JAMES LANDANO for partial summary judgment, Motion hearing set for 10/9/90 on [9-1] motion w/evidence of service & BRIEF SUB. * * * [Entry date 09/11/90]
9/10/90	10	SEALED DOCUMENT (Certification of Francis A. Polito). [Entry date 09/11/90]
9/21/90	11	Notice of CROSS MOTION by FBI, DEPT. OF JUSTICE to dismiss, Motion hearing set for 10/9/90 on [11-1] cross motion w/Cert. of Svc. (BRIEF SUB). [Entry date 09/25/90]
9/21/90	12	DECLARATION of Regina M. Superneau Re: [11-1] cross motion to dismiss [Entry date 09/25/90]
10/1/90	13	Notice of CROSS MOTION by VINCENT LANDANO for summary judgment, Motion hearing set for 11/13/90 on [13-1] cross motion w/Certification of Service. (BRIEF SUB) [Entry date 10/03/90]
		* * * *
11/29/90	17	OPINION (signed by Judge H. L. Sarokin) (ej) [Entry date 11/30/90]
11/29/90	18	ORDER granting in part, denying in part [11-1] cross motion to dismiss mooting [9-1] motion for partial summary judgment (signed by Judge H. L. Sarokin) [Entry date 11/30/90]
		* * * *

DATE		PROCEEDINGS
12/10/90	21	Notice of MOTION by FBI, DEPT. OF JUSTICE for reconsideration of [18-1] order, Motion hearing set for 1/14/91 on [21-1] motion w/Certificate of Service & BRIEF SUB. [Entry date 12/12/90]
		* * * *
12/13/90	23	ORDER granting in part, denying in part [21-1] motion for reconsideration of [18-1] order granting in part, denying in part [13-1] cross motion for summary judgment, vacating [18-1] order (signed by Judge H. L. Sarokin) (ej)
12/27/90	24	Notice of MOTION by FBI, DEPT. OF JUSTICE for reconsideration of [23-1] order vacating [18-1] order, Motion hearing set for 1/14/91 on [24-1] motion w/Certificate of Service. (BRIEF SUB)
		* * * *
2/1/91	27	TRANSCRIPT of Proceedings taken on 1/28/91 (SAROKIN) (ej) [Entry date 02/04/91]
2/25/91	28	OPINION (signed by Judge H. L. Sarokin)
2/25/91	29	ORDER, clarifying & amending [23-1] order vacating [18-1] order, [17-1] order (signed by Judge H. L. Sarokin)
2/28/91	30	AMENDED OPINION (signed by Judge H. L. Sarokin) [Entry date 03/01/91]
2/28/91	31	AMENDED ORDER clarifying & amending opinion of 11/29/90 & order of 12/13/90. (signed by Judge H. L. Sarokin) [Entry date 03/01/91]
3/8/91	32	NOTICE OF APPEAL filed by 1:00 by FBI, DEPT. OF JUSTICE Re: [31-1] order, [23-1] order vacating [18-1]order. * * * [Entry date 03/11/91]

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 91-5161

VINCENT JAMES LANDANO

v.

UNITED STATES DEPARTMENT OF JUSTICE;
THE FEDERAL BUREAU OF INVESTIGATION,
APPELLANTS

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
3/12/91	CIVIL CASE DOCKETED. Notice filed by US Dept of Justice, FBI.
	* * * *
3/12/91	MOTION filed by Appellants to stay district court order dated February 28, 1991 (which compells the releasement of FBI files on March 25, 1991 at 4:00 p.m.) pending appeal. Certificate of Service dated 3/11/91.
	* * * *
3/20/91	ORDER filed (*Sloviter*, Chief Judge and Scirica, Circuit Judge) It is hereby ORDERED that the district court's order of February 28, compelling the release of FBI files is stayed pending further order of this court. Defendant United States is directed to respond by letter to be filed with the Clerk of this Court, no later than Tuesday, March 26 to the letter of March 19 from Neil Mullin, counsel for the appellee, stating reasons, if any, why the documents in its possession which pertain solely to Victor Forni should not be released forthwith, filed. (emd)
	* * * *

DATE	PROCEEDINGS
4/2/91	EXPEDITED SUPERSEDING BRIEFING NOTICE ISSUED. Appellant brief and appendix due to be hand-filed & hand-served 4/16/91; Appellee's brief due to be hand-filed & hand-served 4/29/91; Appellant's reply brief, if any, due to be hand-filed & hand-served 5/6/91. (adl)
4/2/91	ORDER filed (*Sloviter* ZZ!, Chief Judge, and Scirica, Circuit Judge) After consideration of the correspondence by counsel, the stay order entered March 20, 1991 will stand without change, leaving all remaining issues to be addressed by the parties to the merits panel to which this matter has been expedited. The Clerk is directed to expedite appeal, filed.
	* * * *
4/15/91	BRIEF on behalf of Appellant US Dept of Justice, Appellant FBI, Pages: 50, Copies: 10, Delivered by mail, filed. Certificate of service date 4/15/91.
4/15/91	APPENDIX on behalf of Appellant US Dept of Justice, Appellant FBI Copies: 4 Volumes: 1, Delivered by mail, filed. Certificate of service date 4/15/91.
4/16/91	CALENDARED for Tuesday, May 21, 1991. Rescheduled from 5/23/91.
4/29/91	BRIEF on behalf of Appellee Vincent James Landano, Pages: 50, Copies: 10, Delivered by mail, filed. Certificate of Service date 4/29/91.
4/29/91	MOTION filed by Appellee Vincent James Landano to file supplemental appendix including 4 pages of material (SA 59 to 62) supplementing the record below.
4/29/91	BRIEF IN SUPPORT on behalf of Appellee Vincent James Landano to motion to file supplemental appendix, filed.

DATE	PROCEEDINGS
5/3/91	REPLY BRIEF on behalf of Appellants US Dept of Justice and FBI, Copies: 10, Delivered by mail, filed. Certificate of service date 5/3/91.
5/6/91	Letter dated 5/3/91 from appellants advising they do not oppose motion to file supplemental appendix filed by Appellees on April 29, 1991 and they do not intend to file any response to that motion, received for the Court's information.
	* * * *
5/20/91	ARGUED 5/20/91 Panel: Stapelton, Scirica, Aldisert, Circuit Judges.
5/21/91	ORDER filed (*Stapleton*, Scirica, and Aldisert, Circuit Judges) granting motion to file supplemental appendix by Appellee Vincent James Landano.
5/21/91	SUPPLEMENTAL APPENDIX on behalf of Appellee Vincent James Landano. Copies. 10 Delivered by mail, filed. Certificate of service date 4/29/91. [see 5/21/91 order].
	* * * *
2/11/92	OPINION (*Stapleton*, Authoring Judge, Scirica and Aldisert, Circuit Judges), filed.
2/11/92	JUDGMENT, Affirming insofar as that portion of the said judgment which directs production of material withheld solely on the basis of Exemption 7(D); and, reversed insofar as that portion of the judgment which orders production of material withheld in reliance on Exemption 7(C). It is further ordered and adjudged that on remand the said District Court is directed to enter a new judgment implementing the decision reached in the opinion of this Court. All of the above in accordance with the opinion of this Court, filed.

DATE	PROCEEDINGS
2/19/92	MOTION filed by Appellants US Dept of Justice and FBI to extend time to file petition for rehearing en banc to and including 3/26/92. Certificate of Service dated 2/18/92.
2/24/92	ORDER (Clerk) granting motion to extend time to file petition for rehearing en banc by Appellants US Dept of Justice and FBI. Extension granted to 3/26/92
2/24/92	ORDER AMENDING OPINION *Stapleton*, Authoring Judge, Scirica and Aldisert, Circuit Judges, filed.
3/26/92	PETITION by Apellants for rehearing in banc, filed. Certificate of service dated 3/25/92.
4/14/92	ORDER filed (Sloviter, Chief Judge, Becker, *Stapleton*, Authoring Judge, Mansmann, Greenberg, Hutchinson, Scirica, Nygaard, Roth and Aldisert, Circuit Judges) denying petition for in banc rehearing by Appellant US Dept of Justice, FBI. Judges Becker, Stapleton, Mansmann, Greenberg and Hutchinson would have granted rehearing.
4/17/92	MOTION filed by Appel[illegible] US Dept of Justice and FBI to stay mandate to and including May 21, 1992. Certificate of Service dated 4/16/92.
4/27/92	RESPONSE filed by Appellee Vincent James Landano in opposition to motion to stay mandate. Certificate of service dated 4/24/92.
	* * * *
5/11/92	ORDER filed (Mansmann, Authoring Judge) granting motion to stay mandate by Appellants US Dept of Justice and FBI. Mandate Stayed to 5/21/92.

DATE	PROCEEDINGS
5/14/92	MOTION filed by Appellants US Dept of Justice and FBI to further stay mandate until 6/20/92. Certificate of Service dated 5/13/92.
6/5/92	ORDER filed (Stapleton, Authoring Judge) granting motion to further stay mandate by Appellants US Dept of Justice and FBI. Mandate Stay to 6/20/92
6/26/92	Supreme Court of U.S. notice filed advising petition for writ of certiorari filed by Appellants US Dept of Justice and FBI. Filed in the Supreme Court on 6/22/92 at Supreme Ct. case number: 91-2054.
7/30/92	Supreme Court of U.S. notice filed advising petition for writ of certiorari filed by Appellee Vincent James Landano. Filed in the Supreme Court on 7/23/92 at Supreme Ct. case number: 92-161.
10/9/92	U.S. Supreme Court order dated 10/5/92 at S.C. number: 91-2054, granting petition for writ of certiorari by Appellant US Dept of Justice, FBI, filed.
10/13/92	U.S. Supreme Court order dated 10/5/92 at S.C. number: 92-161 ONLY, denying petition for writ of certiorari by Appellee Vincent James Landano. filed.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil Action No. 90-1953

VINCENT JAMES LANDANO, PLAINTIFF

-vs-

UNITED STATES DEPARTMENT OF JUSTICE AND THE FEDERAL BUREAU OF INVESTIGATION, DEFENDANTS

FIRST AMENDED COMPLAINT FOR INJUNCTIVE RELIEF

Vincent James Landano, residing at 51D Reading Road, Edison, New Jersey in the County of Middlesex, alleges:

1. This is an action brought under the Freedom of Information Act, 5 U.S.C. Section 552, as amended (hereinafter "FOIA") to enjoin defendants from withholding from public disclosures certain records of the United States Department of Justice, Federal Bureau of Investigation, within their possession and control.

2. This action is further brought under the Privacy Act of 1974, 5 U.S.C. Section 552a (hereinafter the "Privacy Act"), to enjoin defendants from preventing plaintiff's access to certain records within an agency system of records which pertain to the murder of Newark Police Officer John Snow on August 13, 1976, and to compel the delivery of such documents or copies thereof for inspection by the plaintiff.

3. This Court has jurisdiction over this action pursuant 5 U.S.C. 552(a)(4)(B) and Section 552a(g)(1)

(B), and venue is proper under 5 U.S.C. Section 552a (g)(5).

4. Plaintiff has exhausted all administrative remedies pursuant to Section 552(a)(5)(C).

5. Plaintiff, Vincent James Landano, is a citizen of the United States who was convicted of the murder of Newark Police Officer John Snow in Hudson County Superior Court in the State of New Jersey on May 17, 1977. The records to which plaintiff seeks access contain information concerning the investigation and prosecution of another suspect, Victor Forni who has, since plaintiff's conviction, been implicated as the actual murderer of Officer Snow. *See, Landano v. Rafferty, et al.*, 126 F.R.D. 627 (D.N.J. 1989)

6. Defendant, United States Department of Justice, is an agency of the United States, established by statute and charged with responsibility for, *inter alia*, the administration of justice.

7. Defendant, Federal Bureau of Investigation (hereinafter "FBI), an agency within the defendant United States Department of Justice, is an agency of the United States established by statute and charged with responsibility for *inter alia*, law enforcement.

8. Plaintiff has filed two separate FOIA Requests. On or about September 30, 1988, plaintiff requested access to FBI files pertaining to the murder of Police Officer John Snow. Defendants have designated this request as number 306,424 (hereinafter referred to as the "Snow Request" *Exhibit A*, hereto).

9. On or about January 10, 1989, plaintiff made an additional request for access to FBI files pertaining specifically to Victor Forni (a copy of that request is attached as *Exhibit B*). The defendants have designated that request as number 310,265 (hereinafter the "Forni Request").

10. After a delay of approximately 20 months, defendants partially and inadequately responded to the

Snow Request (#306,424) on May 11, 1990. Defendants provided plaintiff with only 330 of 733 document pages which defendants identified as responsive to plaintiff's request. Many of the 330 pages produced are heavily redacted.

11. On or about May 21, 1990, plaintiff appealed defendants denial of plaintiff's Snow Request (#306,424). (A copy of plaintiff's appeal letter is attached as *Exhibit C.*)

12. On or about July 3, 1990, defendants denied plaintiff's appeal by affirming their initial action with respect to the Snow Request (#306,424). (A copy of the letter denying plaintiff's appeal is attached as *Exhibit D.*)

13. Approximately 17 months have passed since plaintiff's Forni Request (#310,265) was made and defendants have failed to provide any access to such documents. On February 13, 1989 defendants forwarded a letter to plaintiff stating that the large number of FOIA requests had delayed its response to plaintiff's requests. (A copy of the letter is attached as *Exhibit E.*)

14. Plaintiff appealed defendants decision by letter of April 10, 1990. (A copy of the letter is attached as *Exhibit F.*)

15. By letter dated May 7, 1990 defendants denied plaintiff's appeal and conceded that plaintiff had exhausted administrative remedies. (A copy of the FBI letter denying Plaintiff's appeal is attached as *Exhibit G.*)

16. Plaintiff has exhausted all administrative remedies on both the Forni Request (#310,265) and the Snow Request (#306,424).

17. The defendants have failed to state any valid grounds for exemption under FOIA, the Privacy Act, or under agency regulation.

18. Plaintiff is presently out of prison under the supervision of federal authorities as the result of a ruling by United States District Judge H. Lee Sarokin on July 27 and 28, 1989. Judge Sarokin's ruling has been re-

versed by the Third Circuit and plaintiff now awaits the Supreme Court's decision on his Petition for Certiorari. There is a strong likelihood that if the decision of the Third Circuit is not reversed by the United States Supreme Court, plaintiff's claims will be the subject of an evidentiary hearing in the New Jersey Superior Court.

19. The FBI files contain critical evidence, including analysis of physical evidence and information concerning eyewitnesses to the Snow killing. This case involves a long term pattern of suppression of exculpatory evidence by various prosecutors. The FBI files will likely provide further evidence of such suppression and afford further grounds for post-conviction relief to the plaintiff.

20. The release of the FBI files will benefit the public interest by exposing the corrupt and illegal conduct of certain prosecutors and criminal investigators who have suppressed evidence concerning the Snow killing that reveals the identity of Snow's murderer. Many of these individuals presently serve as public servants and have never been reprimanded, penalized or punished in any way for their illegal activity. Several are still in a position which allows them to violate the law and the civil rights of United States citizens and others. These public servants have permitted a dangerous individual to move freely among the population and imprisoned plaintiff for a crime he did not commit. Conduct of this type compromises the safety of all individuals and tears at the fabric of the criminal justice system. The public has the right to obtain these files for the purpose of removing from office officials who have condoned such conduct and for the purpose of exposing such illegal activity.

21. Pursuant to FOIA, and the Privacy Act, plaintiff has a right of access to the documents requested and defendants have no legal basis for their actions in withholding such documents. The defendants have acted in arrogant disregard of the Freedom of Information Act, the Privacy Act, as well as their obligations under the Fifth Amendment of the United States Constitution to

make exculpatory, material evidence available to defendants.

WHEREFORE, plaintiff prays that this Court:

(a) order defendants immediately to make available all documents responsive to the Forni Request, No. 310,265, without redaction or deletions of any nature;

(b) upon exhaustion of administrative remedies, order defendants to make available all documents responsive to the Snow Request, No. 306,424, without redaction or deletions of any nature;

(c) award plaintiff costs and reasonable attorneys' fees in this action pursuant to 5 U.S.C. Section 552(a)(4)(E) and 5 U.S.C. Section 552a(g)(3)(B);

(d) issue a written finding pursuant to 5 U.S.C. Section 552(a)(4)(F), that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholdings; and,

(e) grant such other and further relief as the Court may deem just and proper.

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Attorneys for Plaintiff-Appellee

By: s/ Neil Mullin
NEIL MULLIN, ESQ.

DATED: July 10, 1990

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

(Caption Omitted in Printing)

AMENDED ANSWER

[Filed Aug. 9, 1990]

Defendants, United States Department of Justice and the Federal Bureau of Investigation, by and through their attorneys, Michael Chertoff, United States Attorney, by Susan C. Cassell, Assistant U.S. Attorney, answering the allegations of plaintiff's Amended Complaint:

1. Paragraph 1 sets out one of plaintiff's legal bases for this action to which an answer its not required. To the extent an answer may be deemed required, defendants deny the allegations set forth therein.

2. Paragraph 2 sets out plaintiff's second legal basis for this action to which an answer is not required.

3. Paragraph 3 contains plaintiff's jurisdictional basis for this action to which an answer is not required. To the extent an answer may be deemed required, defendants deny the allegations set forth therein.

4. Paragraph 4 contains a legal conclusion to which an answer is not required. To the extent an answer may be deemed required, defendants deny the allegations set forth therein.

5. The defendants lack knowledge of information sufficient to form a belief as to the truth of the allegations set forth in paragraph 5 and, thus deny.

6. Defendants deny the allegations contained in paragraph 6, and assert that the Department of Justice is an

agency of the executive branch of ~~the~~ United States Government.

7. Defendants deny the allegations contained in paragraph 7, and assert that the Federal Bureau of Investigation is not an "agency" within the meaning of the term agency as defined in Title 5, U.S.C., Section 552(f).

8. Defendants deny the allegations contained in paragraph 8, and assert that plaintiff made a FOIA request dated September 30, 1988, directed to the Newark Office of the FBI, which received FOIPA # 306424.

9. Defendants deny the allegations contained in paragraph 9, and assert that the plaintiff made a FOIA request dated January 10, 1989, directed to FBI Headquarters, Washington, D.C., which received FOIPA #310265.

10. Defendants deny the allegations in paragraph 10.

11. Defendants admit the allegations contained in paragraph 11.

12. Defendants admit the allegations contained in paragraph 12.

13. Defendants admit that, with regard to FOIPA # 310265, the FBI sent a letter to plaintiff dated February 13, 1989, and otherwise deny, and assert that the FBI sent a letter to plaintiff dated September 27, 1989, wherein plaintiff was advised that without a proof of death or an authorized notarization of consent, the disclosure of law enforcement records or information about a private citizen other than the requesting party is an unwarranted invasion of personal privacy and defendants were prohibited by law from responding. Further, defendants assert that the FBI sent a letter to plaintiff's attorney dated May 10, 1990, enclosing a copy of the letter of September 27, 1989.

14. Defendants admit that the plaintiff appealed FOIPA #'s 306421 and 310265 to the Department of Justice by letter dated April 10, 1990, but otherwise deny the allegations set forth in paragraph 14.

15. Defendants deny the allegations in paragraph 15, and assert that the Department of Justice forwarded a

letter to plaintiff's counsel dated May 7, 1990, wherein plaintiff was advised that he may treat the May 7, 1990 letter as a denial of his appeal, and that he may bring action in an appropriate federal court. Plaintiff was also advised in the May 7, 1990 letter that the Department of Justice's role in any appeal was limited to review of those records to which access has been denied.

16. Defendants admit the allegations in paragraph 16.

17. Paragraph 17 contains a legal conclusion to which an answer is not required. To the extent an answer may be deemed required, defendants deny the allegations contained therein.

18. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 18 and thus deny.

19. This paragraph contains characterizations of the underlying facts in this matter to which an answer is not required. To the extent an answer may be deemed required, defendants deny the allegations contained in paragraph 19.

20. This paragraph contains self-serving rhetoric, rather than allegations of fact; thus no response is necessary. To the extent defendants are required to respond, the defendants deny the allegations contained in paragraph 20.

21. Paragraph 21 contains conclusions of law to which no answers are required. To the extent an answer may be deemed required, defendants deny the allegations contained therein, and assert that plaintiff has failed to comply with a condition precedent under FOIA for release of information concerning a living person, other than the requesting party, in that plaintiff has failed to provide the defendants with a notarized consent of the party about whom information is sought.

The last section of plaintiff's complaint sets forth plaintiff's prayer for relief to which no answer is required.

To the extent an answer may be deemed required, defendants deny the allegations contained therein.

Any and all allegations in the plaintiff's complaint not heretofore specifically admitted, denied or averred are hereby denied.

AFFIRMATIVE DEFENSE

1. This Court lacks subject matter jurisdiction over these claims, due to the plaintiff's failure to comply with a condition precedent to release of information under the FOIA.

2. The Complaint fails to state a claim against these defendants as to which relief may be granted regarding FOIPA # 310265, since it requested information regarding a living person, other than the requesting party, with out the consent of that person.

3. Any documents or portions of documents not produced by defendants are statutorily exempt from production under one of the FOIA exemptions.

4. The FBI is an improper defendant in any civil action under FOIA and the FBI should be dismissed as a party defendant. 5 U.S.C. § 552f.

WHEREFORE, the defendants, United States Department of Justice and the Federal Bureau of Investigation respectfully request that this Amended Complaint be dismissed in its entirety and that they be awarded costs and such other relief as this Court may seem just and proper.

Respectfully submitted,

MICHAEL CHERTOFF
United States Attorney

By: /s/ Susan C. Cassell
SUSAN C. CASSELL
Assistant U.S. Attorney
Deputy Chief, Civil Division

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

(Caption Omitted in Printing)

DECLARATION OF REGINA M. SUPERNEAU

I, Regina M. Superneau, hereby declare as follows:

(1) I am a Special Agent (SA) of the Federal Bureau of Investigation (FBI), and am currently assigned in a supervisory capacity to the Freedom of Information-Privacy Acts (FOIPA) Section, Information Management Division (IMD), at FBI Headquarters, (FBIHQ), Washington, D.C.

(2) Due to the nature of my official duties, I am familiar with the procedures followed by the FBI in responding to requests for information from its files received pursuant to the provisions of Title 5, United States Code (U.S.C.), Section 552, commonly known as the Freedom of Information Act (FOIA), and Title 5, U.S.C., Section 552a, commonly known as the Privacy Act (PA) of 1974. I am familiar both with the procedures followed in responding to the plaintiff's FOIA request and with the documents responsive to that request.

(3) The purpose of this declaration is to: (a) Set forth the pertinent correspondence related to plaintiff's FOIPA request; (b) Explain the FBI's Central Records System (CRS); (c) Identify records found in FBIHQ which are responsive to plaintiff's FOIPA request; (d) Explain the processing of plaintiff's FOIPA request; and (e) Justify the propriety of the FOIA exemptions claimed by the FBI.

I. CORRESPONDENCE PERTAINING TO PLAINTIFF'S FOIPA REQUEST

(4) The following communications pertain to plaintiff's FOIPA request. A true copy of each of the following nineteen (19) items of correspondence is attached hereto and made a part hereof as Exhibits A thru S.

(A) Letter from plaintiff to the FBI, Newark Field Office (NK), dated September 30, 1988, requesting all files pertaining to the murder of Newark Police Officer John Snow.

(B) Letter from NK to plaintiff, dated October 6, 1988, acknowledging receipt of plaintiff's request. Plaintiff was advised that a search of the indices as NK revealed one main file responsive to plaintiff's request and that his request was being referred to FBIHQ for appropriate handling.

(C) Letter from FBIHQ to plaintiff dated November 15, 1988, advising plaintiff that there were approximately 600 pages to process and that the estimated duplication fee would be $50.00.

(D) Letter from plaintiff to FBIHQ, undated, advising of his willingness to pay the duplication fees.

(E) Letter from FBIHQ to plaintiff, dated December 5, 1988, acknowledging receipt of his letter, in which he expressed his willingness to pay duplication fees. Plaintiff was also advised there would be a delay in handling his request due to the large number of FOIPA requests received by the FBI.

(F) Letter from plaintiff to FBIHQ, dated December 11, 1988, inquiring if advance payment would expedite the processing of his request.

(G) Letter from FBIHQ to plaintiff, dated January 30, 1989, advising plaintiff that advance payment would not assist in expediting his request. Also enclosed was a copy of the U.S. Department of Justice policy entitled "When to Expedite FOIA Requests."

(H) Letter from Mr. Neil Mullin, plaintiff's attorney, to FBIHQ, dated May 26, 1989. Mr. Mullin advised that his client would be appearing on June 2, 1989, before Judge Sarokin in the U.S. District Court, District of Newark and that he wanted the requested documents before that date.

(I) Letter from FBIHQ to plaintiff, dated October 12, 1989, advising plaintiff of substantial delays in handling the backlog of requests. Plaintiff was further advised that until his request had been partially or fully completed, he would not receive any further correspondence from the FBI.

(J) Letter from FBIHQ to Mr. Mullin, dated November 6, 1989, enclosing a copy of a letter sent to his client regarding the status of his request. Mr. Mullin was advised that the letter was returned to the FBI with no forwarding address and he was asked to advise the FBI if his client was still interested in obtaining the documents.

(K) Letter from Mr. Mullin to FBIHQ, dated November 15, 1989, advising that his client was still interested in pursuing his request. He also requested that FBIHQ forward all future correspondence regarding his client's request to his office.

(L) Letter from plaintiff to FBIHQ, dated November 15, 1989, advising that he was still interested in his FOIA request and that all future correspondence should be directed to his current address.

(M) Letter from Mr. Mullin to the Department of Justice, Office of Information and Privacy (DOJ/OIP), dated April 10, 1990, wherein he gave notice of an administrative appeal.

(N) Letter from FBIHQ to plaintiff, dated April 18, 1990, advising plaintiff that there were 330 pages ready for release and that the amount due for duplication was $23.00.

(O) Letter from Mr. Mullin to FBIHQ, dated April 23, 1990, enclosing check for $23.00.

(P) Letter from plaintiff to FBIHQ, dated May 2, 1990, furnishing authorization to release all FOIA material to Mr. Mullin.

(Q) Letter from FBIHQ to plaintiff, dated May 8, 1990, releasing 330 pages pursuant to plaintiff's request.

(R) Letter from DOJ/OIP to Mr. Mullin, dated June 5, 1990, in which DOJ acknowledged receipt of plaintiff's administrative appeal and advised him that the substantial backlog which existed might cause some delay.

(S) Letter from DOJ/OIP to Mr. Mullin, dated July 3, 1990, in which he was advised that the FBI's action in the matter had been affirmed.

II. EXPLANATION OF THE FBI'S CENTRAL RECORDS SYSTEM

(5) The CRS of the FBI consists of administrative, applicant, criminal, personnel and other investigative files compiled for law enforcement purposes. This system maintains the files in a numerical sequence, delineated according to subject matter. The subject matter of a file may relate to an individual, organization, company, event, activity or foreign intelligence matter. Access to the CRS is afforded by the General Indices, which is arranged in alphabetical order and consists of over 68 million index entries concerning various subject matters.

(6) The index entries fall into two general categories: "main" index entries and "cross-reference" index entries. A main index entry carries the name of an individual, organization, activity, or the like, which is the principal subject of a file contained in the system. A cross-reference index bears the name of an individual, organization, activity, or the like, which is not the subject of the file, but rather is located in a file concerning the investigation of another individual or organization. It should be noted that the FBI does not index all the names of individuals contacted or information received during an

investigation. Only those names and that information considered pertinent, relevant and necessary for further retrieval are indexed. The decision to index is made by the investigative FBI Agent or supervisor in the field and the supervising FBI Agent at FBIHQ, except for the names of subject(s), suspect(s), or victim(s) carried in the case caption, which are automatically indexed.

III. MECHANICS OF HANDLING FOIPA REQUESTS

(7) In order to equitably administer the processing of requests for records in accordance with the disclosure provisions of the FOIA and PA, all such requests are handled in the approximate order received by the FOIPA Section.

(8) Upon receipt of a request, a search is made of the General Indices of the CRS. If no record of an investigation concerning the subject matter of the request is located, the requester is so advised. If the CRS search indicates that files which may be within the purview of the request have been located, the requester is so advised. The request is then placed in the backlog in chronological order based upon the date of receipt. Once the FBI is able to initiate actual processing, the request is assigned to a Miscellaneous Documents Examiner (MDE) for processing.

(9) The mechanical task of processing an FOIPA request involves first retrieving the original file from the CRS. The file is then examined to determine if there is a need for a security classification review. Should the MDE determine that such a review is required, the records are forwarded to the Document Classification Appeals and Affidavits Unit (DCAAU), where the records are once again handled in chronological order by the date of receipt. After the classification review by the DCAAU, based on a line-by-line reading of the documents, the records are returned to the assigned MDE for continued processing according to the original date of receipt.

(10) The MDE then has the file photocopied. This work copy is then reviewed and marked for deletions and exemptions, as authorized by statute and where appropriate. From the working copy, an additional copy is made for the requester showing the deleted portions blacked out. Similar to the classification review, this review consists of a line-by-line reading, with constant attention to matters which involve, among other considerations, the privacy and confidentiality of third parties, classified data, and other information that is exempt from release pursuant to the FOIA and PA statutes.

(11) This entire review process is carried out under the supervision of Special Agent Attorneys. This is done to ensure that no material to which the requester is entitled is erroneously withheld and that no material that should be withheld is inadvertently released. The time necessary to process a request cannot be significantly reduced without taking shortcuts that could threaten the legitimate interest of both the requester and the Government, as well as the rights of third parties appearing in the files under consideration.

IV. IDENTIFICATION OF RECORDS WITHIN THE SCOPE OF THE PLAINTIFF'S REQUEST

(12) Pursuant to the plaintiff's request of September 30, 1988, to NK for information regarding the murder of Police Officer John Snow, a search of the General Indices was conducted. This search revealed one "main" file, NK 184-68, which was deemed to be responsive to plaintiff's request. A corresponding "main" file, FBIHQ 184-533, was located. The "184" classification concerns FBI investigations into "Police Killings." The legal authority under which the FBI conducts its investigation into police killings is pursuant to a Presidential Directive, dated June 3, 1971.

(13) NK file 184-68 consists of two volumes and two Sub A sections, which contain 726 pages. This file per-

tains to a police killing investigation, of which plaintiff was a subject and which resulted in his conviction. The file was processed and 324 pages were released after excisions were made pursuant to exemptions authorized under subsection (j)(2) of Title 5, U.S.C. Section 552a and subsections (b)(2), (b)(6), (b)(7)(C), (b)(7)(D) of Title 5, U.S.C., Section 552.

(14) FBIHQ "main" file 184-533 is a one-volume file which contains 233 pages. Numerous documents in the Newark file that were processed pursuant to plaintiff's request were found to be duplicative of those contained in the file at FBIHQ. These duplicate documents were not considered for release unless additional information was included on the duplicate documents. Six pages from the FBHIQ file were released after excisions were made pursuant to exemption (b)(7)(C) of Title 5, U.S.C., Section 552.

V. DESCRIPTION OF DOCUMENTS

(15) The following is a description of the types of documents released to plaintiff:

(A) *Airtel.* An airtel is transmitted by mail and is an interim summary of information, usually of the activities of one of the field divisions of the FBI. It is designed to expeditiously alert other field divisions and/or FBIHQ of a pertinent development in a case that would require prompt attention.

(B) *Memorandum.* This document is a summary of activities of all pertinent field divisions of the FBI, and is prepared by an FBIHQ official for another FBIHQ official, to assist in the overall supervision of the case. This type of document is also prepared by a case agent in a field division, and is directed to his or her immediate supervisor or to the Special Agent in Charge of the field division, to advise of pertinent developments in the investigation. Its format is similar to a letter,

but the purpose is different, inasmuch as it is designed strictly for internal use.

(C) *Investigative Report.* This document is a summary of investigative activities prepared by various field offices of the FBI and is submitted to FBIHQ. It addresses itself to the focus of the investigation which is indicated in the title of the case.

(D) *Teletype.* This document is transmitted by teletype and, like an airtel, is an interim summary of information, usually of the activities of one of the field divisions of the FBI. It is designed to expeditiously alert other field divisions and/or FBIHQ of a pertinent development in a case.

(E) *FD-159.* This document is used to record information of an investigation that was furnished to other agencies.

(F) *FD-160.* This document is an indices search slip. This form is used by field divisions to search their general indices and list "main" files and "cross-references" identifiable with a subject.

(G) *FD-340 and FD-340a.* These documents are envelopes contained in the files of the field division that conducted the investigation. Enclosed in the envelopes are exhibits such as photographs, interview notes, statements from subjects, complaints, and subpoenas obtained by the FBI during the investigation.

VI. JUSTIFICATION OF DELETED MATERIAL

(16) The records at issue in this case are part of the CRS of the FBI. Accordingly, all these records are properly exempt from disclosure under the PA pursuant to Title 5, U.S.C., Section 552a, (j)(2), and the regulation under which the FBI applies exemptions is found at Title 28, Code of Federal Regulations (CFR), Section 16.96. The pertinent records were, nevertheless, processed under the FOIA to determine which, if any, could be released.

VII. EXPLANATION OF FORMAT UTILIZED FOR THE JUSTIFICATION OF DELETED MATERIAL

(17) The format utilized in this case to itemize, index and justify the deleted material details the specific exemption asserted for a particular deletion and a precise description and justification for the deleted material.

(18) Prior to the preparation of this declaration, the responsive documents were completely reviewed, and it was determined that the deleted information fell into four main categories. Each of the categories enumerated hereinafter contain a recitation of the statutory exemption asserted, the rationale for its application, and a precise description of the subject matter of the particular deletion. Emphasis has been placed on adequately describing the content of the withheld information to avoid a general conclusory assertion that the material is exempt.

(19) Attached hereto as Exhibit T are Documents 1 through 200, which are copies of responsive documents released to plaintiff. These documents contain, on their faces, coded categories of exemptions, which detail the nature of the information withheld pursuant to the provisions of the PA, Title 5, U.S.C., Section 552a and Title 5, U.S.C., Section 552. To further describe with any more specificity the information being withheld would identify the material sought to be protected. Every effort was made to provide the plaintiff with all reasonably segregable portions of the material requested.

(20) Copies of the documents released to the plaintiff are assembled in the same sequence as they appear in the original files maintained by the FBI. Whenever the FBI has withheld pages in their entirety, a sheet has been substituted listing the number of pages denied, their location within the file, and the exemptions pursuant to which they were withheld.

(21) The following is a discussion of the mechanics of the coded format provided to the Court.

VIII. MECHANICS OF UTILIZING FORMAT

(22) To determine the pertinent justification for deleted material on each processed document, refer to the document in question, note the coded number adjacent to the deleted material and then refer to the corresponding coded category listed below.

(23) For example, if (b)(7)(C)-1 appears on the document, the (b)(7)(C) designation refers to the general discussion in the main category of the exemption asserted relative to an "Unwarranted Invasion of Privacy." The subcategory "1" particularizes and describes the specific material deleted, which, in this example, is the identity of FBI personnel.

IX. JUSTIFICATION CATEGORIES: EXEMPTIONS ASSERTED; RATIONALE; DESCRIPTION OF DELETED MATERIAL

(24) This section contains a discussion of the substantive categories and subcategories of deleted information.

Summary of Justification Categories

Category (b) (2)	Internal Agency Rules and Practices
(b) (2)-1	Informant Symbol Numbers (Cited in conjunction with (b) (7) (D)-1)
Category (b) (6)	Clearly Unwarranted Invasion of Personal Privacy
(b) (6)-1	Rap Sheets of Third Parties
Category (b) (7) (C)	Unwarranted Invasion of Personal Privacy
(b) (7) (C)-1	Names and/or Initials of Special Agents and/or Clerical Personnel of the FBI
(b) (7) (C)-2	Identities and/or Information Pertaining to Third Parties Who Are Mentioned in FBI Files

(b) (7) (C)-3	Information Concerning the FBI's Investigative Interest in a Third Party
(b) (7) (C)-4	Identities of Sworn State and Local Law Enforcement Officers (Cited in conjunction with (b) (7) (D)-4)
(b) (7) (C)-5	Witnesses and Similar Third Parties Interviewed in the Course of an FBI Investigation (Cited in conjunction with (b) (7) (D)-3)
Category (b) (7) (D)	Confidential Source Material
(b) (7) (D)-1	Source Symbol Numbers
(b) (7) (D)-2	Identities and/or Information Furnished by an FBI Source Reporting on a Regular Basis
(b) (7) (D)-3	Names of Third Parties and/or Information Provided by Them Under an Implied or Express Promise of Confidentiality (Cited in conjunction with (b) (7) (C)-5)
(b) (7) (D)-4	Identities and/or Information Provided by Non-Federal Law Enforcement Agencies (Cited in conjunction with (b) (7) (C)-4)
(b) (7) (D)-5	Identities and/or Information From Financial and/or Commercial Institutions and Local Non-Law Enforcement Agencies Furnished in Confidence

(25) Information denied to plaintiff was withheld pursuant to Title 5, U.S.C., Section 552, exemptions (b)(2), (b)(6), (b)(7)(C), (b)(7)(D). Following is a detailed explanation of the application of these exemptions to the withheld documents.

(b)(2)-1 *Internal Agency Rules and Practices*

(26) Title 5, U.S.C., Section 552, subsection (b)(2), sets forth an exemption for information relating solely to the internal rules and practices of an agency. This exemption pertains to agency instructions for agency personnel regarding agency business that is of no interest to the general public.

(27) Exemption (b)(2)-1 was utilized to delete source symbol numbers. Symbol numbers are used exclusively as internal identifiers for administrative control and have no bearing on the substance of the information. This purely internal FBI practice of numerically cataloging sources allows the FBI to more efficiently direct investigative documents to the proper files and attribute information to sources without specifically identifying that source. In each instance, the (b)(7)(D) exemption was asserted in conjunction with (b)(2) to delete informant symbol numbers.

(b)(6)-1 *Personal Privacy Exemption*

(28) Title 5, U.S.C., Section 552, subsection (b)(6) exempts from disclosure personnel files, medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. This exemption requires the balancing of an individual's rights to privacy which includes background investigations, medical information and similar privacy values "against the preservation of the FOIPA's basic purpose of disclosure."

(29) In this case, the information withheld under the provisions of exemption (b)(6) consisted of criminal history records of third parties. The disclosure of such records would constitute a "clearly unwarranted invasion of personal privacy". In making a determination regarding disclosures of this material, the public's right to know was balanced against the individual's right to privacy. It was concluded that the ramifications of release, that is, the

potential harassment, criticism, and embarrassment of the third parties, would far outweigh the minimal public interest in the criminal history records of the third parties and would thus be a clearly unwarranted invasion of their personal privacy.

(b)(7)(C) *Unwarranted Invasion of Personal Privacy*

(30) Title 5, U.S.C., Section 552, subsection (b)(7)(C) exempts from release "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information could reasonably be expected to constitute an unwarranted invasion of personal privacy." In making a determination whether to release the identities of third parties and the information about them contained in the records responsive to the plaintiff's FOIPA request, the public's interest has been carefully balanced against the individual's right to personal privacy.

(b)(7)(C)-1 *Names and Initials of FBI Employees*

(31) The identities of FBI personnel which appear in the documents at issue were protected since publicity, adverse or otherwise, regarding any particular investigation may seriously prejudice their effectiveness in the conduct of other investigations to which they are assigned. The privacy consideration protects FBI personnel, as private citizens, from unnecessary, unofficial questioning as to the conduct of an investigation, and from subpoenas issued by private litigants in civil suits related to official investigations. FBI personnel investigate violations of various criminal and national security statutes, and do not act in the capacity of private investigators for private litigants. They conduct searches, make arrests and perform other official administrative duties, all of which constitute reasonable, but nonetheless serious intrusions into individuals' lives. Many of these people carry grudges

resulting from their legal difficulties which last for years and sometimes need little excuse to harass the responsible FBI employee; therefore, in order to reasonably safeguard against an invasion of their privacy, the names and initials of FBI employees have been withheld.

(b)(7)(C)-2 *Identities of and Information Concerning Third Parties Mentioned*

(32) Exemption (b)(7)(C) was used to delete the names and identifying data concerning individuals who were mentioned during the course of interviews or contacts with other third parties, and towards whom no investigative effort was directed.

(b)(7)(C)-3 *Information Concerning Individuals Who Are of Investigative Interest to the FBI*

(33) It is not unusual for the FBI to pursue more than one individual in the same investigation. When third parties exist as co-subjects in an investigative file, one cannot always assume that one subject is aware of another's activities or the FBI's specific interest in another individual. Frequently, a considerable amount of background and other information is compiled regarding such associates and is contained in the same investigative file.

(34) The FBI has a responsibility to protect the privacy rights of individuals pursuant to the Privacy Act of 1974. The FBI cannot disseminate information gathered during the course of an investigation to persons not legally entitled to receive such information. To release to the plaintiff certain information about third parties appearing in FBI files would reveal the extent to which those persons were of investigative interest to the FBI. This would be an unwarranted invasion of personal privacy, because it might subject these individuals to unnecessary public attention, harassment, or criticism as well as possibly pose a threat to their safety. Since the FBI has no means of controlling the use made of information

released pursuant to an FOIA request, once such rights are breached by disclosure, they are lost forever.

(35) In making a determination in the instant case whether to release the identifying data of third parties and information about them to the plaintiff, an attempt was made to balance the public's right to know against the individual's right to personal privacy.

(b)(7)(C)-4 *Identities of Non-Federal Law Enforcement Personnel*

(36) The identities of cooperating, non-Federal law enforcement personnel were withheld for reasons of personal privacy. There persons are identified in FBI records in their official capacities as individuals who provided information in connection with this investigation. To identify them might subject them, as individuals, to unofficial inquiries not anticipated by their contact with Federal agencies, thus resulting in an unwarranted invasion of their personal privacy.

(b)(7)(C)-5 *Witnesses and Third Parties Interviewed*

(37) The (b)(7)(C)-5 exemption was asserted to delete the identities of third parties interviewed and personal information about them.

(38) The person interviewed will often supply the interviewing Special Agent with personal information about himself or herself. This personal information, unrelated to plaintiff's request, has been withheld as being an unwarranted invasion of personal privacy.

(39) In the above instances, exemption (b)(7)(C) has been used in conjunction with (b)(7)(D) to withhold the identities and all other personal information about third parties interviewed. All reasonably segregable information furnished by third parties has been released to plaintiff to the extent that it would not tend to identify those third parties.

(40) The main function of the FBI is information gathering and fact-finding. Through this the FBI assists in the enforcement of Federal statutes and carries out its responsibility in the national security field. By far the greatest part of the FBI's investigative effort is expended on interviewing witnesses, potential witnesses, and other individuals who provide background data or information of lead value. Information provided by these third parties is one of the FBI's most productive tools.

(41) During the course of an interview, the largest roadblock to successfully obtaining the desired information is the fear of subsequent exposure. The threat inherent in exposure is reprisal, which may be either physical or economic, or ridicule and ostracism. The possibility of litigation would also present a strong deterrent. In order to surmount these obstacles, persons being interviewed must be assured, either expressly or implicitly, that information received will be held in the strictest confidence. The continued access to persons willing to honestly relate pertinent facts bearing upon a particular investigation far outweighs any benefit plaintiff might derive from being furnished the names of those who cooperated with the FBI. If the identities of these interviewees were released and the fact that they spoke candidly with the FBI became known, their future cooperation, as well as the cooperation of others, would undoubtedly be inhibited.

(b)(7)(D) *Confidential Sources*

(42) Title 5, U.S.C., Section 552, subsection (b)(7)(D) exempts from disclosure material that "could reasonably be expected to disclose the identity of a confidential source, . . . and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source."

During the course of most investigations, many individuals who are not established sources of the FBI, are interviewed under circumstances in which confidentiality is created. These individuals furnish information with either an expressed or implied understanding that their cooperation will not be needlessly divulged outside the FBI. Release of the identities of these confidential sources or the information they provided could subject these sources to negative public attention, and could inhibit future cooperation from these individuals or other individuals in possession of information of value to the FBI.

(b)(7)(D)-1 *Source Symbol Numbers*

(43) One method utilized to protect the identities of these confidential sources, who gave information under an expresed assurance of confidentiality, involves the use of source symbol numbers. This is reserved for confidential sources, whether individuals or organizations, who provide sensitive information to the FBI on a regular basis. These confidential sources are generally in a position to provide valuable information to the FBI in more than one case and are generally contacted by the FBI on a regular or periodic basis. When an FBI Special Agent initially contacts a source of this type, he or she gives the source an express promise of confidentiality. The source is assured that his or her relationship with the FBI will not be revealed to the public and that the information received will not be attributed to the source when used or disseminated by the FBI. It is this assurance upon which the source relies when he or she provides information. Without such assurance, it would be extremely difficult, if not impossible, for the FBI to develop and maintain confidential sources. In order to provide increased security, the FBI assigns permanent symbol numbers to such confidential sources. The symbol numbers, consisting of a combination of letters and numbers are unique to each source. They are used in written documents and communications to refer to the source in lieu of the source's name or identity.

(44) It is the FBI's position that even the release to the public of a confidential source's permanent symbol number could serve to reveal the source's identity. Several factors are relevant in support of this position. First, the letters and digits which comprise a confidential source's permanent symbol number have independent significance and meaning. Thus, disclosure of the permanent symbol number alone would serve to reveal certain important information about the source which might lead to the discovery of his or her identity. Secondly, the disclosure of a permanent symbol number should not be viewed as an isolated instance. If the source's permanent symbol number is released in one instance, it may also then be released in others. If the same permanent symbol number of a source is thus released to the public at various times and in various document contexts, this may ultimately lead to the identification of the confidential source. This is true because each new context in which the source's symbol number is disclosed reveals additional items of information such as dates, times, places and names of persons. This information can be added together and analyzed by an individual who is familiar with the facts and circumstances set forth in the documents, which could lead to the identification of the confidential source. This is a particularly critical consideration in regard to commercial sources since they are generally contacted by the FBI more often and over a longer period of time than most types of confidential sources.

(b)(7)(D)-2 *Identity and/or Information Furnished by an FBI Source Reporting on a Regular Basis*

(45) Exemption (b)(7)(D)-2 was used to delete information from sources quoted in the pertinent documents from whom information was regularly received under an

expressed assurance of confidentiality. This information was received with the understanding that it would be held in the strictest confidence. These sources are informants within the common meaning of that term and not merely conscientious or cooperative citizens. Illustrative of an expressed assurance of confidentiality is the manner in which the FBI treats such information. The identity of these sources is so sensitive that they are usually not referred to by name in the FBI document that records the information they furnished. The identities of these individuals are known to very few FBI employees and are available on a "need to know" basis only. These special precautions are needed because of the sensitive nature of the information being received and the possible harm that may befall these persons if their identities are revealed. The manner in which the FBI actually obtains information from these sources is also demonstrative of the expressed assurance of confidentiality under which it was received. The information is received only at locations and under conditions which assure the contact will not be noticed. It is only with the understanding of complete confidentiality that the aid of such people can be enlisted and only through this confidence that such individuals can be persuaded to continue providing valuable assistance in the future. Significantly, protection by exemption from disclosure is afforded by the statute to *all* the information furnished by the source, as well as the actual identity of the source. This exemption recognizes the reality that the identity of a source may be determined from an analysis of the information furnished by the source. Accordingly, the FBI deleted any information provided by confidential sources as described in this paragraph.

(46) It may also be noted that any disclosure which might reveal the confidential source's identity not only can cause great harm to the relationship between the FBI and the source, but also can cause considerable harm to the relationship between the FBI and other investigative agencies. The disclosure of a source's identity would forever neutralize that source as a future source of information. In addition, when the identity of one source is disclosed, it has a chilling effect on the activities and cooperation of other sources.

(b)(7)(D)-3 *Named Third Parties and/or Information Provided by Them Under an Implied Promise of Confidentiality*

(47) The FBI must consider the dangers to a cooperating individual of being revealed during an official investigation. Rumors and innuendos could have a lasting effect on the reputation and day to day life of the exposed individual if he or she is subjected to public scrutiny. Threats of violence and physical harm directed towards the individuals and members of his or her family may result in possible reprisals. In order that the FBI's investigative responsibilities are not deterred, persons being interviewed must be assured, either expressly or implicitly, that the information received will be held in the strictest of confidence. Consequently, subsection (b)(7)(D)-3 is asserted in conjunction with (b)(7)(C)-5, *supra*, to withhold the identities of persons interviewed and information received only from said parties.

(48) The privacy of a person interviewed has been consistently protected by the FBI on the basis that the information was received under an implied assurance of confidentiality. Under the FOIA, these considerations are stated in two separate exemptions, (b)(7)(C) and (b)(7)(D); however, they are not mutually exclusive.

(49) When Agents of the FBI conduct interviews, the FBI is seeking the assistance of the interviewee either to obtain facts that will result in the prosecution of the subject(s) of an investigation or to solicit the cooperation and assistance of the interviewee in a matter which may impact on the national security of the United States. In both cases, the FBI is asking individuals to become in-

volved in situations in which others may lose substantial liberty or property interests; thus, the interviewee is placed in a position that could subject him or her to acts of reprisal, harassment, litigation, or an unnecessary amount of public attention. Individuals providing information to Federal agencies in furtherance of a law enforcement activity must be free to do so without fear of possible reprisal should their identities or their information be disclosed to persons in whom they have not confided. This is not to say that any such reprisal is threatened or even likely in this case, but a general public policy requires that individuals must be free to furnish investigative information to the Government with complete candor and without the understandable tendency to hedge or withhold information out of fear that their names or information furnished will later be made public. Persons providing information, including witnesses to a crime who may expect to be called upon at a later time to testify in public at a judicial proceeding, should be secure in the knowledge that, absent the necessity of such public testimony with its attendant judicial restraints and protections, their assistance and their identities will be held in confidence. The fear of such exposure all too often inhibits the cooperation of otherwise conscientious citizens. These considerations have been met by the traditional willingness and ability of the FBI to assure persons interviewed that their identities would be protected.

(50) The considerations described in the preceding paragraph are recognized under the FOIA, which exempts from disclosure material furnished by confidential sources, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or in a lawful national security investigation. Significantly, protection from disclosure is afforded by the FOIA statute to all information furnished by these sources, as well as the actual identity of a source. This recognizes that the identity of a source

may be determined from an analysis of the information furnished by the source. This is particularly true when the analysis would be made by a person knowledgeable of the facts and circumstances which pertain to the investigation. What may seem trivial to the uninformed, may be of great importance to one who has a broad view of the scene and can put the questioned information in its proper context. The identification of a confidential source through such an analysis would be more than an unwarranted invasion of his or her personal privacy, it would breach the confidentiality under which he or she was interviewed.

(51) The FBI is aware that the Government generally provides the defendant in a criminal trial with the witnesses' prior statements and other documents. It is the FBI's position when processing these statements that disclosure of documents for the limited purpose of preparing one's defense in a criminal trial has no bearing on the processing of these very same documents under the FOIPA. The FBI believes that the disclosure by the Government for this limited purpose in accordance with a criminal defendant's Constitutional right to a full and fair trial should not be held as a waiver of the FBI's right to withhold the information pursuant to applicable FOIPA exemptions.

(52) Although it may be apparent from a reading of FBI documents that an individual may have been subjected to a criminal trial, FBI documents reporting on a trial are usually silent as to both who may have testified and the scope of their testimony. Generally, all that is reported is the fact of the trial, the verdict(s), and sentencing. During the course of most FBI investigations, it is not unusual for certain people to be interviewed and provide useful information but, for one reason or another, not testify at trial. The decision as to who will testify rests with the attorney prosecuting the case; therefore, a Document Examiner or reviewing Special Agent cannot engage in conjecture regarding the

identity of witnesses and the extent of their testimony. Accordingly, to protect the privacy of and the confidential relationships established with individuals appearing in FBI documents, the FBI routinely protects the identities of and the information received from those individuals through the application of appropriate FOIA exemptions, unless those documents reflect the appearance and testimony of an individual at a public trial.

(b)(7)(D)-4 *Identities of and Information Provided by Local Law Enforcement Agencies*

(53) The confidential source material being protected includes the identities of state law enforcement agencies, their personnel and information supplied from their records.

(54) The unauthorized disclosure of information which has been provided by local law enforcement agencies will have an adverse effect on the current system of exchange of information which exists in the law enforcement community. The FBI is convinced that the willingness of other law enforcement agencies to freely exchange essential information will be seriously jeopardized unless the current system of mutual confidentiality remains unchanged. This traditional understanding of confidentiality is reinforced on a daily basis through contacts Special Agents of the FBI have with the law enforcement community. The free flow of information between cooperating law enforcement agencies plays an integral part in the success of many criminal investigations. If the identities of the agencies and the information furnished by them were made public, without regard to the impact on those agencies, and in violation of the mutual confidential relationship, the FBI's future ability to carry out its investigative responsibilities would be seriously and, perhaps, irrevocably impaired.

(b)(7)(D)-5 *Identities and or Information From Financial and or Commercial Institutions and Local Non-Law Enforcement Agencies*

(55) The confidential source material deleted pursuant to (b)(7)(D)-5 was that emanating from private service corporations, such as communication companies, financial corporations and local and state government agencies which collect and regulate non-investigative information and which was furnished by an employee or employees of those institutions and agencies pursuant to either an implied or expressed assurance of confidentiality. These sources furnished to the FBI information readily available to them in the ordinary course of business, with the understanding that it would be held in the strictest confidence. As previously mentioned the most important tool an investigative agency possesses is the ability to elicit cooperation through interviews. This cooperation is attributed to their belief in the integrity of the FBI and the assurance that their cooperation will not be publicly exposed and thereby subject the employee or the organization to possible legal action or loss of business. To reveal the identities of these sources would breach the relationship and impede the future investigative efforts of the FBI by diminishing the willingness of these sources to cooperate.

(56) The information contained in this declaration constitutes a complete and accurate itemization of the documents responsive to the plaintiff's FOIA request. For each document or portion of a document withheld, justifications have been cited pursuant to exemptions contained in the FOIA. All reasonably segregable non-exempt responsive material has been provided to the plaintiff.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 21, 1990.

s Regina M. Superneau
REGINA M. SUPERNEAU
Special Agent
Federal Bureau of Investigation
Washington, D.C.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

(Caption Omitted in Printing)

ORDER

[Filed Dec. 13, 1990]

This matter having been opened to the court on plaintiff's motion for partial summary judgment with respect to the Forni file, pursuant to Fed. R. Civ. P. 56; and defendant's cross-motion for summary judgment with respect to the Forni and Snow files, pursuant to Fed. R. Civ. P. 56; and plaintiff having then cross-moved for summary judgment with respect to the Snow file; and the defendants having supplied a *Vaughn* index with respect to the Snow file; and defendants having received the consent of Mr. Forni to release the Forni file to plaintiff; and for the reasons stated in the court's November 29, 1990 opinion; and for good cause shown,

IT IS on this — day of December, 1990 hereby

ORDERED that plaintiff's motion for partial summary with respect to the Forni request is partially granted, requiring defendant to release all information in the Forni file which is not withholdable under the court's November 29, 1990 opinion; and it is further

ORDERED that defendant's cross-motion for summary judgment with respect to the Forni file is denied; and it is further

ORDERED that defendant's cross-motions for summary judgment with respect to the Snow file is granted as to all FBI symbol source and file numbers, symbol numbers of confidential FBI informants, individual rap

sheet information mentioned in defendant's Snow file, names of FBI informants or FBI undercover personnel, and information that could reasonably be expected to reveal the sources of confidential information; and it is further

ORDERED that defendant's cross-motion for summary judgment with respect to the Snow file is denied as to the names of witnesses in the Snow investigation, the names of FBI support personnel, the names of other law enforcement personnel not covered by this court's interpretation of categorical balancing; and it is further

ORDERED that plaintiff's cross-motion for summary judgment with respect to the Snow file is granted in part and denied in part in that defendant need not release to plaintiff any FBI symbol source and file numbers, symbol numbers of confidential FBI informants, individual rap sheet information mentioned in defendant's Snow file, names of FBI informants or undercover personnel, and information that could reasonably be expected to reveal the sources of confidential information; and it is further

ORDERED that a copy of the entire Snow file, redacted only to the extent ordered here, shall be delivered by defendant to the offices of plaintiff's counsel at 4 P.M., Feb. 15, 1991; and it is further

ORDERED that a copy of the entire Forni file, redacted only to the extent consistent with this court's November 29, 1990 opinion, shall be delivered by defendants to the offices of plaintiff's counsel at 4 P.M., Feb. 15, 1991; and it is further

ORDERED that this order supercedes this Court's Order of November 29, 1990; that Order is hereby vacated.

/s/ H. Lee Sarokin
H. LEE SAROKIN
U.S.D.J.

SUPREME COURT OF THE UNITED STATES

No. 91-2054

UNITED STATES DEPARTMENT OF JUSTICE, ET AL.,
PETITIONERS

v.

VINCENT JAMES LANDANO

ORDER ALLOWING CERTIORARI

Filed October 5, 1992

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted.

October 5, 1992

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